

**STATE OF INDIANA  
DEPARTMENT OF STATE REVENUE**

**IN REGARDS TO THE MATTER OF:**

**LOYAL ORDER OF MOOSE LODGE NO.629  
DOCKET NO. 29-2001-0361**

**FINDINGS OF FACT, CONCLUSIONS OF  
LAW AND DEPARTMENTAL ORDER**

An administrative hearing was held on Wednesday, February 6, 2002 in the office of the Indiana Department of State Revenue, 100 N. Senate Avenue, Room N248, Indianapolis, Indiana 46204 before Bruce R. Kolb, an Administrative Law Judge acting on behalf of and under the authority of the Commissioner of the Indiana Department of State Revenue.

Petitioner, Loyal Order of Moose Lodge No. 629, was represented by Roger Linville, Treasurer. Attorney Steve Carpenter, appeared on behalf of the Indiana Department of State Revenue.

A hearing was conducted pursuant to IC 4-32-8-1, evidence was submitted, and testimony given. The Department maintains a record of the proceedings. Being duly advised and having considered the entire record, the Administrative Law Judge makes the following Findings of Fact, Conclusions of Law and Departmental Order.

**REASON FOR HEARING**

On December 18, 2001 the Indiana Department of Revenue assessed Petitioner unrelated business income tax, civil penalties, and additional license fees totaling eight thousand four hundred dollars (\$8,400). The Petitioner protested in a timely manner. A hearing was conducted pursuant to IC § 4-32-8-1.

**SUMMARY OF FACTS**

- 1) On September 5, 2001, the Indiana Department of Revenue's Agent from the Criminal Investigation Division (CID) went to the North Michigan Road location where the Petitioner conducts its gaming events.
- 2) The Department alleges that during the year 1997 the Petitioner purchased and sold gaming supplies without a license.
- 3) The Department contends that the records supplied by the Petitioner did not match the records subpoenaed from Petitioner's supplier.
- 4) The Department argues that Petitioner failed to keep accurate financial records thereby underpaying the amount of annual license fees.
- 5) The Department, during the course of its investigation, discovered several checks written to Mike Abbott. The Department argues that Mike Abbott received remuneration for operating charity gaming events for the Petitioner.

### **FINDINGS OF FACTS**

- 1) In 1997, the Petitioner purchased and sold gaming supplies without a license.
- 2) During the hearing, the Department's representative stated, "So is it your testimony here that you did not have a license for early 1997?" The Petitioner's representative responded, "That's correct"(Record at 23).
- 3) Petitioner did not possess a license to sell gaming supplies.
- 4) Petitioner did conduct charity gaming during 1997 without a license.
- 5) As a result of inaccurate record keeping, the Petitioner failed to pay the appropriate fees when renewing its annual bingo license.
- 6) During the Department's investigation, documentation was obtained allegedly showing that Mike Abbott was paid to operate Petitioner's charity gaming events.
- 7) The Department produced photocopies of ten (10) checks written to Mr. Mike Abbott and signed by himself and one other person (see Department Exhibit D).
- 8) The ten (10) photocopied checks in Department's Exhibit D were dated in the months of February and March of 1999.
- 9) According to the Department's own records, Mr. Mike Abbott was an Operator for the Petitioner during the period of May 1, 2000 to April 30, 2001 (see Department Exhibit A).

### **STATEMENT OF LAW**

- 1) Pursuant to IC 6-8.1-5-1, the Department's findings are prima facie evidence that the Department's claim is valid. The burden of proving that the findings are wrong rests with the person against whom the findings are made. See Portland Summer Festival v. Department of Revenue, 624 N.E.2d 45 (Ind.App. 5 Dist. 1993).
- 2) IC 4-32-9-1 states: A qualified organization may conduct the following activities in accordance with this article:
  - (1) A bingo event.
  - (2) A charity game night.
  - (3) A raffle event.
  - (4) A door prize event.
  - (5) A festival.
  - (6) The sale of pull tabs, punchboards, and tip boards.
- 3) IC 4-32-9-2 provides: Except as provided in section 3 of this chapter, a qualified organization must obtain a license from the department to conduct an allowable event.
- 4) Pursuant to IC 4-32-9-25: (a) Except as provided in subsection (b), an operator or a worker may not receive remuneration for:
  - (1) preparing for;
  - (2) conducting;
  - (3) assisting in conducting;

- (4) cleaning up after; or
- (5) taking any other action in connection with; an allowable event.
- (b) A qualified organization that conducts an allowable event may:
  - (1) provide meals for the operators and workers during the allowable event; and
  - (2) provide recognition dinners and social events for the operators and workers;
 if the value of the meals and social events does not constitute a significant inducement to participate in the conduct of the allowable event.
- 5) According to IC 4-32-12-1: (a) The department may suspend or revoke the license of or levy a civil penalty against a qualified organization or an individual under this article for any of the following:
  - (1) Violation of a provision of this article or of a rule of the department.
  - (2) Failure to accurately account for:
    - (A) bingo cards;
    - (B) bingo boards;
    - (C) bingo sheets;
    - (D) bingo pads;
    - (E) pull tabs;
    - (F) punchboards; or
    - (G) tip boards.
  - (3) Failure to accurately account for sales proceeds from an event or activity licensed or permitted under this article.
  - (4) Commission of a fraud, deceit, or misrepresentation.
  - (5) Conduct prejudicial to public confidence in the department.
 (b) If a violation is of a continuing nature, the department may impose a civil penalty upon a licensee or an individual for each day the violation continues.
- 6) IC 4-32-12-2 states: The department may impose upon a qualified organization or an individual the following civil penalties:
  - (1) Not more than one thousand dollars (\$1,000) for the first violation.
  - (2) Not more than two thousand five hundred dollars (\$2,500) for the second violation.
  - (3) Not more than five thousand dollars (\$5,000) for each additional violation.

### **CONCLUSIONS OF LAW**

- 1) The Department's findings are prima facie evidence that the Department's claim is valid. The burden of proving that the findings are wrong rests with the person against whom the findings are made.
- 2) In 1997, the Petitioner purchased and sold gaming supplies without a license in violation of IC 4-32-9-1 and 2.
- 3) As a result of inaccurate record keeping, the Petitioner failed to pay the appropriate fees when renewing its annual bingo license.

- 4) The Department did show that Petitioner paid Mr. Abbott; however, it did not meet its burden of proof in showing that Petitioner paid Mr. Abbott for conducting charity gaming events while he was an Operator for the Petitioner.

### **DEPARTMENTAL ORDER**

Following due consideration of the entire record, the Administrative Law Judge orders the following:

The Petitioner's appeal is denied in part and sustained in part. The Petitioner was found to have purchased and sold gaming supplies without a license in violation of Indiana law. The Petitioner also failed to pay the appropriate fees when renewing its annual bingo license as a result of inaccurate record keeping. In addition, Mr. Abbott was found not to have received remuneration from the Petitioner for conducting its gaming operations.

- 1) Under IC 6-8.1-5-1, the organization may request a rehearing. However, rehearings are granted only under unusual circumstances. Such circumstances are typically the existence of facts not previously known that would have caused a different result if submitted prior to issuance of the Departmental Order.
- 2) A request for rehearing shall be made within seventy-two (72) hours from the issue date of the Departmental Order and should be sent to the Indiana Department of Revenue, Legal Division, Appeals Protest Review Board, P.O. Box 1104, Indianapolis, Indiana 46206-1104.
- 3) Upon receipt of the request for rehearing, the Department will review the respective file and the rehearing request to determine if sufficient new information has been presented to warrant a rehearing.
- 4) The Department will then notify the organization in writing whether or not a rehearing has been granted. In the event a rehearing is granted, the organization will be contacted to set a rehearing date.
- 5) If the request for rehearing is denied or a request is not made, all administrative remedies will have been exhausted. The organization may then appeal the decision of the Department to the Court of proper jurisdiction.

**THIS DEPARTMENTAL ORDER SHALL BECOME THE FINAL ORDER OF THE INDIANA DEPARTMENT OF STATE REVENUE UNLESS OBJECTIONS ARE FILED WITHIN SEVENTY-TWO (72) HOURS FROM THE DATE THE ORDER IS ISSUED.**

Dated: \_\_\_\_\_

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Bruce R. Kolb / Administrative Law Judge